

COMPLAINT 2008 – NO. 3
In Re Carrell

REASONABLE CAUSE DETERMINATION AND ORDER OF DISMISSAL
July 16, 2008

I. Nature of the Complaint and Procedural History

The complaint alleges that Senator Mike Carrell, Respondent, distributed two of his campaign brochures at his legislative town hall meeting on May 3, 2008 and that this action violated the Ethics in Public Service Act (Act).

RCW 42.52.180 prohibits the use of public resources for political campaigns and states in pertinent part:

1. No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

The complaint was received by the Board on May 22, 2008. Following an investigation conducted pursuant to RCW 42.52.420 the Board reviewed the complaint at a regularly scheduled meeting on June 19. The Board determined it had both personal and subject-matter jurisdiction.

II. Conclusion

We conclude there is reasonable cause to believe that Respondent used the facilities of the Senate, a legislative town hall meeting and his Legislative Assistant, in violation of RCW 42.52.180 when he supplied two town hall attendees with one copy each of his campaign brochure produced by “Citizens for Mike Carrell, GOP.”

However, pursuant to RCW 42.52.425, we find that the action complained of was inadvertent and minor, and further proceedings would not serve the purposes of the Act.

1. Based on the investigation conducted under RCW 42.52.420 or 42.52.450, and subject to rules issued by each board, the board or the staff of the appropriate ethics board may issue an order of dismissal based on any of the following findings:

(a)....

(b)....

(c) Any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter.

In reaching this conclusion we find it significant that Respondent did not initially provide his campaign brochures at the meeting for distribution and did not provide the two attendees with copies until one or both of them requested information on a particular legislative issue which was described in detail in the brochure.

Even though the facts provide no evidence to indicate that Respondent intended to violate the Act, legislators and staff are cautioned that such intent is not required to establish a violation of RCW 42.52.180.

Legislators and staff must be diligent in ensuring that a wall exists between legislative town hall meetings and use of campaign materials.

III. Determination of Facts

There is reasonable cause to believe that the facts of this case are as follows.

1. Using the facilities of the Senate, Respondent advertised and conducted a legislative town hall meeting on May 3, 2008 in the Council Chambers of DuPont City Hall.
2. One or both of the two members of the public in attendance requested written information on a particular piece of legislation. There were no legislative handouts on this subject available at the meeting.
3. Respondent provided the keys to his vehicle to his Legislative Assistant and directed her to collect two of his campaign brochures from the vehicle and bring them into the meeting where they were handed to the two attendees.
4. In addition to promotional campaign material, the brochures contained bullet points describing key provisions of recently passed legislation which addressed the Washington State Department of Corrections distribution of correctional facilities and repeat offender policies.

IV. Conclusions of Law

1. The legislative town hall meeting was advertised, supported and conducted with the use of agency (Senate) facilities as defined in RCW 42.52.180.
2. The distribution of campaign material during a legislative town hall meeting is a direct or indirect use of agency facilities in assistance of a campaign for election.

V. Order

It is HEREBY ORDERED, ADJUDGED AND DECREED that no further proceedings are warranted in this case and the complaint is dismissed.

Wayne Ehlers, Chair

Date:

Mr. Draper and Ms. McKereghan dissent and approve the following statement.

The only available evidence indicates that a) the brochure had not been brought into the meeting place but had to be obtained from the car, b) Senator Carrell provided the brochure only in response to a request by two (at most) attendees for written information on a specific subject, c) the brochure was not provided to anyone other than the individual requestor(s), d) neither the request nor the fulfillment of the request were made within the hearing of any other attendees, e) both the request and the fulfillment of the request were made in the course of a personal conversation/interview with the requestor(s), f) the brochure contained the information they requested, g) no other materials were available at the meeting that contained this information. Although the brochure was a campaign brochure and we concur with the advice of caution against both intentional and inadvertent violations of the law, it is our opinion that the fact pattern in this case fails to establish by a preponderance of the evidence that the Senator used State facilities “for the purpose of assisting a campaign for election...” We therefore dissent.

Senator Regala abstained from the deliberation and the vote on this complaint.